

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MASSACHUSETTS (Boston)

3 No. 1:25-cv-10685-WGY

4
5 AMERICAN ASSOCIATION of UNIVERSITY PROFESSORS, et al,
6 Plaintiffs

7 vs.

8
9 MARCO RUBIO, in his official capacity as
10 Secretary of State, et al,
11 Defendants

12 *****

13
14 For Hearing Before:
15 Judge William G. Young

16 Case Management Conference

17 United States District Court
18 District of Massachusetts (Boston.)
19 One Courthouse Way
20 Boston, Massachusetts 02210
21 Tuesday, May 6, 2025

22 *****

23 REPORTER: RICHARD H. ROMANOW, RPR
24 Official Court Reporter
25 United States District Court
One Courthouse Way, Room 5510, Boston, MA 02210
rhr3tubas@aol.com

A P P E A R A N C E S

RAMYA KRISHNAN, ESQ.

JAMEEL JAFFER, ESQ.

SCOTT WILKENS, ESQ.

Knight First Amendment Institute at Columbia University

475 Riverside Drive, Suite 302

New York, NY 10115

(646) 745-8500

E-mail: Ramya.krishnan@knightcolumbia.org

and

MICHAEL TREMONTE, ESQ.

NOAM BIALE, ESQ.

Sher Tremonte LLP

90 Broad Street, 23rd Floor

New York, NY 10004

(212) 202-2600

Email: Mtremonte@shertremonte.com

For Plaintiffs

SHAWNA YEN, ESQ.

United States Attorney's Office

1 Courthouse Way, Suite 9200

Boston, MA 02210

Email: Shawna.yen@usdoj.gov

For Defendants

1 P R O C E E D I N G S

2 (Begins, 10:00 a.m.)

3 THE CLERK: The Court will hear Civil Case Number
4 25-10685, the American Association of University
5 Professors, et al vs. Marco Rubio, et al.

6 THE COURT: Good morning. I'm not going to go
7 through the routine of having everyone introduce
8 themselves every time we may get together, but as people
9 may change, um, today I'll ask you to do that again.

10 So would counsel for the plaintiffs introduce
11 themselves and then counsel for the defense.

12 MS. KRISHNAN: Good morning, your Honor, Ramya
13 Krishnan for the plaintiff, and with me at the bar table
14 are Jameel Jaffer, Scott Wilkens, and we're from the
15 Knight First Amendment Institute. We also have
16 co-counsel Noam Biale and Michael Tremonte of Sher
17 Tremonte.

18 THE COURT: And good morning to you all.

19 And for the government?

20 MS. YEN: Good morning, your Honor, Shawna Yen for
21 the United States.

22 THE COURT: And good morning to you.

23 Again I have authorized internet access to this
24 hearing. If anyone has availed themselves of the
25 internet access, I must remind you that the rules of

1 court remain in full force and effect, you must keep
2 your microphone muted, there is no taping, streaming,
3 rebroadcast, screen shots, or other transcription of
4 these proceedings.

5 This is a case-management scheduling conference.
6 As I have traditionally held these conferences, we could
7 go back into the lobby, sit around -- with so many of
8 you I would do it in a jury room, and we could sit
9 around the jury's table and have our coffee and, um,
10 talk. Because that's what I want to do this morning, I
11 want to talk and flag, um, as best I can, the issues
12 that may arise.

13 But for some scheduling, orders, um, I'm going to
14 share my ruminations, as I am the factfinder here as
15 well as the case manager. I invite you to interrupt me.
16 And you may be sure that when I'm done, I'm going to ask
17 for questions and comments.

18 I don't view this -- though in the interests of
19 transparency, I'm doing it out in open court, I have the
20 Court Reporter here, everything's being taken down, I
21 don't view myself -- except as scheduling, I don't view
22 myself as making any rulings today, substantive rulings
23 at all, and so it's not the time to argue. Though I'm
24 not going anywhere and we may have -- we may have
25 further argument at appropriate times, and I'm going to

1 have to have a final pretrial conference. So that's
2 the -- that's what I think this case-management
3 scheduling conference is, a conference among counsel
4 with the Court.

5 Now having collapsed the further hearing for a
6 preliminary injunction with trial on the merits and
7 asked when plaintiffs would be ready, you said 6 weeks.
8 That takes us to June. I have a trial -- interestingly
9 a trial that involves MS-13, to commence on Monday the
10 2nd of June, it will go two weeks. I'm looking for you
11 on Monday the 16th of June.

12 If that case should resolve prior to, um -- and
13 stay close with Ms. Belmont, prior to the 16th, we'll
14 come looking for you. I'll take witnesses out of order.
15 It's jury-waived. I'll try to accommodate you as to
16 timing. But we're not going to look for trial time
17 prior to, um, June since plaintiffs said 6 weeks.

18 I'm going to try the case, um -- as I view it,
19 though the case is framed significantly by the
20 plaintiffs, but as I view it I'm going to try it in two
21 parts. Liability, that is, have any of the President or
22 these high public officials violated your client's First
23 Amendment free speech rights? That's the first part.

24 The second part is remedy. And I'm not assuming
25 remedy, and I'm not -- other than in the most general

1 way I'm not going to talk about it today, because that's
2 the second phase.

3 First, plaintiffs bear the burden of proof. It's
4 a civil case. The burden of proof is proof by a fair
5 preponderance of the evidence. If that's established,
6 then the Court must consider remedy, if any, because
7 redressability here is a very real issue and one we're
8 going to need to talk about, but not today because I
9 would be getting -- well my remarks are going to focus
10 really on liability here and what I think this case
11 involves and what I think the overarching law is. Now I
12 stand to be corrected on all of this, um, I'm trying to
13 be both transparent and helpful.

14 First, I want to make some remarks about what you,
15 as attorneys, and I, as the judicial officer, are doing
16 here together.

17 Each one of you has filed an appearance in this
18 case, so you are subject to the ethical rules of this
19 court, and I have no question about it, I simply note
20 it. This is a trial, I think it's a trial of some
21 public significance, so let me say a couple of things
22 about that.

23 One, if any -- any of you lawyers, or your clients
24 indeed, and I include the government defendants as well,
25 if there's any threats or, um, you are approached in any

1 way, clients or lawyers, about your representation in
2 this case, the issue of obstruction of justice is
3 raised. This is a trial. Trials are meant to be
4 resolved on evidence with the cool, reflective,
5 impartial, um, adjudication of the facts.

6 Also, I really respect -- and I hope the opinion
7 I've issued on standing manifests that respect. I
8 respect vigorous advocacy, I welcome it, I'm -- I'm fine
9 with it. At the same time -- and you won't take this as
10 criticism, and I don't mean it as criticism, I've
11 praised you justly -- and Mr. Graver is not here, but I
12 include him, for the advocacy so far, but ethically you
13 owe the Court absolute candor in answering the Court's
14 questions, and I'm sure I will get it.

15 It's not inappropriate to mention that in another
16 case, um, government counsel, um, suffered -- apparently
17 from what I read in the press, from absolute candor to
18 the tribunal. I'm not going to go into that other than
19 to say, I read the newspapers. If there's any
20 intimation of anything like that in this case -- and
21 I -- I find it hard to believe there could be, um, you
22 can be very very sure that I will draw an adverse
23 inference against that party, a severe adverse
24 inference. I don't expect it and it's totally
25 unacceptable.

1 So now, um, if you'll let me talk a bit about how
2 I think the constitutional right to free speech, um, the
3 framework applies in this case. These are not rulings.
4 I'm being transparent, I'm telling you what I'm thinking
5 going in. So it truly is a free-speech case.

6 Now some of the speech that will be analyzed is
7 the speech of the President and high, um, government
8 officials. That speech may be brutal, coarse,
9 demeaning, um, that makes no difference, it seems to me,
10 these officials have the right to speak. Teddy
11 Roosevelt had it right, "The Presidency is a bully
12 pulpit." Our President is duly-elected in a full and
13 fair election.

14 And one can draw conclusions as to why people
15 speak. Such political speech by the powerful, um, is
16 intended to persuade, but it may also include, um,
17 speech that quite candidly is intended to bully people,
18 to frighten the opposition, to chill the opposition into
19 silence. The First Amendment protects all of that.
20 Justice Scalia remarked once that under the First
21 Amendment a certain amount of fortitude is required."
22 He was speaking of citizens. And that's the case. So
23 this Court, whatever the content of pure speech by the
24 government, by these defendants, I'm starting out
25 believing that's absolutely protected by the First

1 Amendment.

2 Now, at the same time the President, these high-
3 executive public officials, are routinely mocked,
4 maligned, condemned, in equally coarse language, and
5 that's all protected under the First Amendment. We
6 remember that as magnificent a President as President
7 Abraham Lincoln, he was routinely called a "gorilla"
8 throughout his tenure. That's the First Amendment at
9 work, it's boisterous, rambunctious. It can be very
10 coarse, demeaning, vitriolic. We've survived for, um,
11 now close on -- we're talking about 250 years, with
12 that, um, approach to speech under our First Amendment.

13 Retribution, government retribution for speech is
14 prohibited by the First Amendment. In fact, in the
15 circumstances of this case, were there to be found
16 retribution, government retribution for speech, it would
17 go to the very center or core of the concerns of the
18 First Amendment, because it would, um, it appears to be,
19 um, dealing with political speech, what's most precious
20 and must be absolutely protected under the First
21 Amendment. And if that -- if the Court were to find
22 that action by government officials in retribution for
23 free speech, without more, the government -- the Court
24 would be warranted -- and I'm not saying I would,
25 because it's open to proof, and I'm not saying it's

1 presumed, but my view is the Court would be warranted in
2 finding that such retribution chills the speech, the
3 constitutionally-protected speech of others similarly
4 situated. And the Court's ruling on standing as to
5 who's similarly situated here gives some idea who, I
6 think anyway, I would be warranted were I to make that
7 finding, and that -- that's the key finding I think
8 here.

9 So let me come out -- let me come down out of
10 the -- these generalities and talk about what appears to
11 be at issue in this case, at least as framed by the
12 plaintiffs, and I don't adopt their framing, that's
13 the -- that's the framing we've got here.

14 The plaintiffs claim that this is pro-Palestinian
15 speech, certainly that's political speech, protected
16 under the First Amendment. So also within that ambit,
17 um, it would seem -- it would seem, I think, that
18 speech, however coarse, hostile, um, to the State of
19 Israel and its policies, both civil and military, um,
20 that's political speech, that's firmly protected.

21 Now the Executive Orders here -- which are not
22 challenged, and we'll get to that in a moment, speak of
23 "violent antisemitism." Now because the government uses
24 the word "violent," and the President uses that word, I
25 can follow that, that's not challenged. Indeed violent

1 antisemitism, as I understand it, is not protected,
2 under the First Amendment, to citizens or noncitizens
3 alike. But we don't have statutes against hate speech.
4 And while I personally find antisemitism repugnant, I
5 find Islamophobia to be repugnant. I find the choice
6 whether to believe or not believe, if that is the basis
7 of animus toward an individual, I find that contrary to
8 the American character, as I conceive of it. And
9 nothing that I just said has any bearing on this case.
10 You're entitled to know it, it's appropriate that I say
11 it, but that's not going to be the basis for any
12 finding.

13 I do think that under the First Amendment -- the
14 First Amendment, unlike some other countries who
15 prohibit hate speech, we don't under the First
16 Amendment, and so antisemitism, repugnant though it may
17 be, the speech itself is not prohibited.

18 Now I'm very much aware that, um, speech can
19 become threats, threats can become assault, without
20 more. A -- a threat with the potential that it be
21 carried out, or inciting the carrying out of a threat,
22 is, I think, that's an assault at common law. It's open
23 to state and federal authorities to criminalize that.
24 And it's certainly open to these public officials, who
25 have been sued here, to take action against it. Even

1 though pure speech, certainly political speech hostile
2 to the state of Israel, antisemitism, the government --
3 our government has a justified interest in promoting
4 tolerance for all faiths, or no faith, um, that's an
5 appropriate government goal. And just as an aside, I
6 don't know how it's squared with this hostility to what
7 is called "DEI." Put that aside. So enough on that.

8 Two other things I want to say going in that my
9 research has surprised me -- and you're going to want to
10 be thinking about this and I, um, candidly, um, solicit
11 further analysis and briefing. And the first is this.

12 When first I drew this case and began to read
13 the -- to read the complaint and the associated
14 documents, I adopted a view that of course noncitizens
15 have full rights to freedom of speech under the First
16 Amendment. The First Amendment speaks of "persons." I
17 went to law school when the Warren court was sitting and
18 among its justices was Justice Black, who is probably
19 the most famous textualist, and I haven't got the case
20 here, but I thought it was Black as saying that
21 "'persons' means 'persons,' and that's all persons."
22 You didn't have to be a citizen. Now I'm not saying
23 I've changed that view, what I'm saying is I'm not at
24 all clear, under the jurisprudence of the Supreme Court
25 today, that that's correct.

1 I find that that's assumed by a number of my
2 colleagues in related cases that deal with free speech
3 in the lower courts. But, um, I'm not clear that
4 noncitizens have, um, I will call them the "full rights"
5 to free speech that a citizen has. I'm looking for
6 guidance. I'm looking for help.

7 And the second thing is, but this goes more to,
8 um, remedy, but we live in the real world and if we ever
9 got there, maybe we'll have to deal with it.

10 I see that the hearing officer in Mahmoud Khalil's
11 case, again just reading the papers, says, "Well he's an
12 embarrassment to the foreign policy of the United
13 States," and when I first read that I thought, "Well
14 that's not a standard, that exception squanders the
15 rule," an "embarrassment to the foreign policy of the
16 United States"? And then I look into it and of course
17 that is a ground. And more than that, the Supreme Court
18 has spoken to that and says I'm not, um, permitted to
19 question that. I work for the Supreme Court. I'm sworn
20 to give full and complete adherence and implement its
21 rulings. And candidly -- I'm hopeful we don't get to it
22 in this case, but I don't see how that will work if a
23 noncitizen has the same rights as a citizen to speak
24 about these matters.

25 That's really everything I have to say about the

1 law. Let's turn from those general things to, um, how
2 I -- I've tried to, in sort of the law-exam
3 issue-spotting, um, here's some of the issues as we get
4 ready for trial. I'm not hoping that these issues
5 arise, I'm actually hoping -- and I exhort you to,
6 consistent with your duty to your clients, to cooperate,
7 to make things simple and understandable, the public
8 interests will be served, your duties as attorneys to be
9 most easily accomplished. But, um, here's what I think
10 are the elements of the plaintiffs' case in, um -- and
11 then I'll get into some specifics.

12 The plaintiffs say, "All right, here are these
13 Executive Orders, we don't challenge them." Here's all
14 this rhetoric by the defendant President and the high
15 Executive Orders which, pretty clear, goes well beyond
16 what the Executive Orders themselves confine to, but as
17 I see it, they have every right to say what they want to
18 say. And then -- and this of course is where the rub
19 comes.

20 Then the plaintiffs say, "Well there has been
21 retaliation against individuals, it's not just the
22 speech which chills those who are not in office and who
23 are not as powerfully situated with the media
24 organizations and the like, there is, um -- there is
25 retribution against these individuals for their speech."

1 Denied. I've entered an order that we're taking it that
2 all substantive allegations are denied by the defense, I
3 take that very seriously, that's a factual difference.
4 So we're going to have to figure out what happened and
5 what is it that the plaintiffs say is actual retribution
6 against speakers. And then -- I think of things
7 chronologically, then the plaintiffs are going to have
8 to prove the effects.

9 My ruling on standing, um, is you're going to have
10 to have some evidence. I pointed out that a single
11 person can be sufficient for standing for an
12 organization, but I've got to have some evidence of the
13 specific person.

14 Now that's the overview. I think those are the
15 elements. Prove those things by a fair preponderance,
16 then in my view there is liability. I'm not at all sure
17 what that means, but I do think it means, um, it means a
18 declaration of rights. Prove that, it would be my
19 obligation so to declare.

20 And I have no, um -- no inflated view of my role
21 in the firmament here, but I have every sensibility of
22 the responsibility that devolves on me and my obligation
23 to discharge that responsibility. So at minimum there's
24 a declaration of rights. Whether there's any more,
25 we'll see.

1 Now I'm not -- I'm anticipating an expedited
2 narrow-focused run-up to the trial in this case. Here's
3 what I mean. Again we're just talking. So these aren't
4 orders, but this is what I expect, um, I'm trying to
5 flag issues. I'm not saying this is how I'll rule, but
6 I'm simply trying to be helpful.

7 So I am not expecting full discovery. We don't
8 have much time, we only have less than a month, if the
9 case in front of you were to fold and, um, a little more
10 than a month if that goes to two weeks. So I don't
11 expect depositions of certain -- I'm not going to permit
12 any direct discovery of the President or the high
13 executive officials that you have named and sued in
14 their official capacity. I'm not going to require that
15 they answer interrogatories or, um, submit themselves to
16 discovery at all, um, they're busy and they have many
17 other things to do besides deal with this case. The, um
18 -- well having said that, I'm not preventing any of the
19 high executive officials from coming forward and
20 submitting testimony, they have every right to do all
21 that. But I'm not requiring any of it.

22 It seems to be proof would follow pretty much the
23 following form. The Executive Orders are there, I can
24 take judicial notice of them and I'm prepared to,
25 they're not challenged, but they set the framework.

1 On reflection I think -- I want to refine a little
2 bit what I said at the initial hearing. I said to the
3 plaintiffs, "Well you haven't got the evidence here,
4 these -- these newspaper clippings are insufficient
5 because maybe they're not complete." Actually I think
6 the default is the other way. Prove -- and I'm talking
7 plaintiffs now. Prove that these clippings are in fact
8 authentic, then they are admissions, under the Federal
9 Rules of Evidence, by the specific defendant. If
10 they're not complete -- and of course the defense may
11 raise under Article I the fact of the Rules of Evidence,
12 that they're not complete, then it falls upon the
13 defendants, you've got to come up with the complete
14 interview, you've got to come up with the complete
15 outtakes, um, whatever qualifications are not in them,
16 the rhetoric. And I -- I don't think that's going to
17 take as much time and, um, I don't think that's the
18 purpose.

19 Then we come to this whole issue of government
20 retribution, which is what I think the case turns on,
21 because I don't think it would be hard to prove a
22 chilling effect, at least as I've cast standing. And as
23 to that, um, I really do expect the government --
24 plaintiffs may have to frame a request for production,
25 but I expect every contemporaneous document that exists

1 up and down the chain of command within the government
2 bureaucracy that bears on that evidences -- but don't
3 make a request that says, "I want all the documents
4 related to the" -- that's silly, all life is related to
5 other life, so I routinely deny those requests. But
6 seriously now, because I'm hopeful for complete
7 cooperation by the government here, by these executive
8 officials, um, as to or --

9 And candidly I think this is your case to try, but
10 on the retribution issue I would expect the plaintiffs
11 to focus on the -- well I've identified three
12 individuals who are the ones that I read about most in
13 the papers, and that would be Mahmoud Khalil, this
14 Rumeysa Ozturk, and, um, Mohsen Madawi. Because since
15 this is a case about chilling, if the government -- and
16 the government isn't acting secretly here, one thing
17 that can be said is the government's pretty forthright
18 about what it's doing, so in fact part of the
19 plaintiffs' case is that's all intended to chill,
20 that's -- and I won't get into specifics, but I could
21 imagine what evidence we will get to show how
22 frightening it is.

23 I want to -- so I'm asking the plaintiffs -- I'm
24 expecting a limited focus on retribution. If the
25 plaintiffs make that limited focus on retribution, then

1 I expect the government to be absolutely fulsome in its
2 disclosure of contemporaneous documents. And if I'm
3 going to hear from people, if I'm going to hear from --
4 hear from people, um, as witnesses, if subpoenas go out
5 here, the people I -- and I'm just thinking if those
6 were the three, I'd like to hear from the lower-level
7 person or persons who organized the actual apprehension
8 of these three and what instructions they had and why
9 and work back up from there.

10 Now understand I think the government has these
11 high public officials -- and certainly the President of
12 the United States, have, um, various grounds that they
13 may serve to withhold such documents, or some of them,
14 and I want to address those now just to try to head it
15 off.

16 The government has a deliberative privilege. I
17 must honor it and I must honor it without any cost to
18 the defendants, that is drawing any adverse conclusions.
19 But a deliberative privilege just doesn't throw a
20 blanket over the lie. Let me give an example.

21 At some level -- and I'm making all this up just
22 as I -- (Coughs.) At some level, um, let's assume that
23 one or more of the defendants identified here, um, says,
24 within the government, "We should do something about the
25 protests at Columbia, all right, and, um, give me a memo

1 on that," to somebody else. Well that's privileged, it
2 seems to me. But now saying that there's a deliberative
3 privilege doesn't mean the government can't come forward
4 with that, maybe that helps them. But again, it's not
5 for me to say. And something happens within the
6 bureaucracy, someone responds, "Here's a plan, what do
7 you think of that?" Well that's privileged under the
8 deliberative privilege. Meetings at which things were
9 kicked around, um, privileged. But the memo which says
10 "Approved," "Executed," or "Approved, except for
11 Paragraph 6," that's not, that's the directive. The
12 decision's made then. Government works as a
13 bureaucracy. There's nothing wrong with a bureaucracy,
14 a bureaucracy works.

15 And here, when we get down to the level of ICE
16 enforcement agents, they work in -- and again I don't
17 mean this to be pejorative, but in a sort of quasi-
18 military style and they get instructions. All those
19 instructions are not in any way privileged, and I want
20 to know about it. What was going on? Why were they
21 armed or masked or not or identified or not? All of
22 that. What was going on? And why? Who set that out?
23 Who set up this business with the Madawi in Vermont?

24 Now a caution here, and the caution is, um, by
25 identifying these three -- I'm trying to deal with my

1 case, which is a chilling case. I imagine there are
2 documents and documents have been produced and the like.
3 This Court in no way is going to retry immigration
4 proceedings or judicial proceedings in another district,
5 I just want to know what happened. It's the what
6 happened which I imagine the plaintiffs are going to say
7 is the retaliation. And my identifying these three
8 doesn't cabin the plaintiffs in, there may be others,
9 there may be a better. But, um, the fact I haven't
10 heard about them, well that's more evidence that, um, in
11 the community of people who have standing, if they've
12 heard about them, that that's what's going around. We
13 need to know at some stage. But I've heard about these
14 and I'm just the average newspaper-reader. Um, that's
15 one thing, deliberative privilege.

16 It's possible that there's state secrets here, the
17 government has some sort of intelligence about terrorist
18 organizations or the like, and as to this my remarks are
19 directed to the government. If that figures in -- in --
20 well you people are going to have to cooperate.

21 First of all, you're going to have to -- I'm
22 looking at the plaintiffs. You're going to have to
23 limit what you think is the retribution and let the
24 government know, and then the government will be able to
25 answer the question that I now put to the government,

1 and it's an important one.

2 If there's any state secrets issue here, um, I
3 know how to handle those cases, I've handled genuine
4 terrorist cases. I presided over the **Richard Reid** case,
5 the **David Daoud Wright** case. I am aware that there is
6 a -- a rather complete protocol for protecting
7 governmental secrets in the course of litigation, and
8 the government's going to have to do something.

9 You're going to have to -- assuming that's going
10 to be a part of this case, you're going to have to get
11 the proper officer who understands that protocol to
12 advise this Court. I'm going to need a secret clearance
13 for Ms. Belmont and one of my law clerks. I've been
14 there, done that. I don't mean in any way to be blase
15 about it, I take it very seriously. But it doesn't
16 prevent me, as the judicial officer, from knowing what
17 they are.

18 As I understand the protocol, and I have followed
19 it before, is I'm entitled to see them. And the
20 plaintiffs will understand they do not in any way get
21 disclosed in the course of these civil proceedings. But
22 I need to know. Because I very much want to go to
23 trial, as I've described.

24 Lastly is the attorney-client privilege. We're
25 all familiar with that. Understand that under Rule 502,

1 um -- 502 does take some of its coloration from where
2 you sit. Here in Massachusetts, if you, um, claim
3 attorney-client privilege, um, in the state courts, I'm
4 entitled to draw an adverse inference from that, that
5 you're hiding someone. Um, I've always thought that
6 worked in federal court too. I'm not sure of it. My
7 experience has been, over the years, that, um, by
8 telling lawyers that, they're skittish about claiming
9 the attorney-client privilege. And usually what the
10 lawyers have to say -- and I mean no disrespect, I honor
11 lawyers, but it doesn't amount to much anyway. But be
12 aware, coming into the case, with that in mind.

13 Okay, let's see. I don't see -- oh, I want to --
14 I'm surfing back now though, it's basic to the
15 plaintiffs' case, um, to standing. We're going to have
16 to have somebody to establish the standing of each of
17 the associations or entities, um, to the distance that I
18 was willing to accept standing, and nobody's going to
19 testify by pseudonym or anything, it's got to be an
20 actual person. And the sooner they're disclosed, the
21 better off we are, because the defendants, they need to
22 know who that person or persons is.

23 I'm also open to -- I know I didn't go so far, but
24 I don't think the citizen professors have standing, I
25 think that's too far away, but that doesn't mean I

1 wouldn't accept one or two witnesses, um, brief, as to
2 effects on, um, their functioning, as I've seen in the
3 moving papers. But absent standing, um, I'm not giving
4 advisory opinions. So, yes, I think there should be a
5 trial, yes, I think -- and certain noncitizen professors
6 have standing, but it's got to be proved, plaintiffs
7 have to prove it and make disclosures so that the
8 defendants can meet it.

9 Now experts. I don't see experts in this case.
10 I'm not foreclosing any, but I don't see experts in this
11 case. But, you know, I'm -- I think that's for
12 argument. But if someone wanted to propose an expert,
13 and you know what the rules are, and, um, I follow this
14 idiosyncratic rule, that you know you have to produce an
15 expert report. I like to say, in the usual product
16 liability case, that the expert report has to be "to the
17 level of exquisite detail of a patent claim." No
18 expert's going to testify to anything that's not in the
19 report. But actually I just don't see it.

20 Summary judgment prior to trial. It's open to the
21 parties. I don't see it. The -- I can't see how the
22 plaintiffs could get summary judgment, because they bear
23 the burden of proof, and even if things were, um --
24 unless things were actually stipulated, I would accept
25 them. But anything that wasn't stipulated, as the

1 factfinder, I'm open to reject it. So the fact that
2 they don't, um, line by line oppose it, doesn't, um -- I
3 just don't see how you can get there.

4 For any of the defendants to seek summary judgment
5 because the plaintiffs' proof, as you work it up for
6 trial, is inadequate, um, there's this real tension
7 between the right under the First Amendment and this
8 exception for the government to say, "Well they're not
9 citizens and it embarrasses our foreign policy." I
10 don't think that's likely to happen because then these
11 defendants -- that's a really interesting constitutional
12 issue, but it's not my job -- constitutional avoidance
13 is my job. The Supreme Court or any higher court is not
14 going to be happy if you just serve up an interesting
15 constitutional issue. I'm not going to permit that.
16 And it would have to be absolutely stipulated that, um,
17 clearly, um, these high public officials, and the
18 President -- or the President, were, um, violating the
19 First Amendment rights of these people who have
20 standing. I can't conceive that the defense defendants
21 would want to say that, and so I don't see that we're --
22 we're not going to get any, um, "We don't admit it, but
23 if it were true, it makes no difference, because we have
24 the right to say a person can be excluded because it
25 embarrasses our foreign policy."

1 You've all sat mute. No one interrupted me. I
2 really would rather sit around a table and, um, drink
3 coffee -- but I drink tea. But in all honesty now, I
4 anticipate a final pretrial conference. I'm looking
5 forward to a trial. I didn't spot anything else. You
6 see the tenor of my concerns.

7 Questions or comments from the -- and not just to
8 mechanical things. (Laughs.) And this always happens,
9 I start and then I think of something else.

10 (Laughter.)

11 I think that -- you're going to find trouble from
12 me if you're going to tell me this is going to take more
13 than two weeks, I think we can get this case tried in
14 two weeks -- and less maybe, hopefully less. It doesn't
15 mean these are of any less importance, these are, um, of
16 extraordinary importance, but I've got to get some
17 focus. And then I would be helped going in -- well the
18 first day of trial, if not even before, with requested
19 findings and rulings, even though we haven't had the
20 trial, um, because that gives me a basis to rule, to
21 find and rule as soon after the close of evidence as
22 it's possible.

23 This is, after all, the start of, um -- with the
24 plaintiffs' claim that they needed a preliminary
25 injunction for irreparable harm, I take that very very

1 seriously. But now I'll try to be quiet and answer
2 questions and listen to comments. I want your help.

3 Yes?

4 MS. KRISHNAN: Thank you, your Honor. And I
5 appreciate everything that you've shared with us.
6 You've given us a lot to digest. I wonder if you'd give
7 us a few minutes to --

8 THE COURT: I'll do better than that, I'll take a
9 recess and we'll come back after a half an hour or maybe
10 20 minutes.

11 Does that make sense?

12 MS. KRISHNAN: Yes.

13 THE COURT: How about the defense, the same?

14 MS. YEN: The same, your Honor. Thank you.

15 THE COURT: Yes, one last thing. Come to the
16 sidebar, and this does not need to be on the record.

17 (Sidebar off the record.)

18 THE COURT: We'll stand in recess for one half
19 hour.

20 (Recess, 11:00 a.m.)

21 (Resumed, 11:30 a.m.)

22 THE COURT: Taking a half hour allowed me to think
23 of one thing I had not said, and I'll say it now.

24 I could also anticipate -- and I get this from
25 reading articles about new computer systems that allow

1 the government to search the social media visa holders.
2 I've had cases where the government, quite properly
3 says, "We're not going to disclose because it will
4 reveal law-enforcement techniques," and that's a
5 perfectly appropriate thing for the government to say.
6 And the way I have always dealt with it, and the way I
7 believe it should be dealt with, is the government, if
8 it says that, I still get to see the data -- and again
9 I'm making it up, say the adherence to a terrorist
10 organization or something, "But we're going to not tell
11 you how we know." Well I'm not going to buy that. But
12 I will allow an ex-parte filing, and I will review the
13 material myself in camera. That's different from the
14 state secrets where I must, under law, absolutely
15 preserve the state secrets, in this case it's up to me.
16 And I'm not going to reveal anything that in fact is not
17 generally known -- well I might make use of the data to
18 ground a finding. That's the one additional thing that
19 I had not said.

20 Yes, questions and comments? Let's start with the
21 plaintiffs.

22 MS. KRISHNAN: Thank you, your Honor. I'd like to
23 address four things.

24 The first is that, you know, just to say that we
25 appreciate this Court's willingness to move quickly in

1 this case for the reasons your Honor described.

2 The second is we think this can be a short trial,
3 we're committed to pursuing it in a narrow and focused
4 way, as your Honor previewed. We don't think it will
5 take longer than a week.

6 The third is just on timing. In some respects
7 we'd like to move more quickly and in some respects we'd
8 like to build in a few more weeks at the back end.
9 There are some scheduling conflicts that a couple of our
10 key witnesses have, they are scholars and they have been
11 granted international travel in connection with their
12 academic work from mid June onwards. They're the two
13 key representatives of MESA and the AUP.

14 THE COURT: It's jury-waived. Not a problem.

15 MS. KRISHNAN: Okay.

16 THE COURT: I have tailored my scheduling to your
17 requests. Now you're not the only one who has an
18 interest, the President and the high public officials
19 have -- but if they agree, I will move it.

20 Again, um, I usually take vacation in August. My
21 vacation is not as important as this trial and I've
22 drawn other cases of I think significance, so I want to
23 get this done. A two-week continuance is fine, if
24 that's what you want.

25 Go ahead.

1 MS. KRISHNAN: Thank you.

2 THE COURT: And you were talking, the Clerk tells
3 me --

4 Does that make sense?

5 MS. YEN: Well, yes, sure, your Honor. Thank you
6 so much for the guidance that you provided earlier in
7 this hearing.

8 I think at this point we're waiting to hear from
9 the plaintiffs as to how they plan to put on their case.
10 It's really difficult for us to gauge timing until we
11 hear more.

12 THE COURT: Understood.

13 So we interrupted you, and go ahead.

14 MS. KRISHNAN: Thank you.

15 So for those two individuals we're wondering if,
16 um, this Court would take their testimony out of turn in
17 the first couple of weeks of June, but to have the
18 balance of the trial scheduled for the last couple of
19 weeks of July.

20 THE COURT: The last couple of weeks of July?

21 MS. KRISHNAN: Or earlier in July.

22 THE COURT: Yeah, how about the first couple of
23 weeks, and here's why.

24 MS. KRISHNAN: Yes, your Honor.

25 THE COURT: Just talking back and forth is fine,

1 but this -- win lose or draw, this needs some written,
2 um, conclusions, even as to the first part, and I'm not
3 thinking about a second part. But as to the first part.

4 So the first two weeks of July? Yes. Taking
5 witnesses out of order? Yes. Um, again, subject to the
6 defendants' proper concerns.

7 Go ahead.

8 MS. KRISHNAN: Thank you. I've just had a note
9 passed to me.

10 The week of July 7th, if that's convenient to the
11 Court, um, I think would work on our end. One of our
12 co-counsel has a commitment earlier on in July.

13 THE COURT: Well understand that this is a civil
14 case, I'm responsible for trying criminal cases as well.
15 But, yes, I'll work with you. And it's jury-waived. I
16 normally sit on trial from 9:00 in the morning until
17 1:00 in the afternoon and do everything else in the
18 afternoon. If worst comes to worse, I can sit on trial
19 in the afternoon, though I would reserve Friday
20 afternoons to try to do everything else. That's a hard
21 schedule. I've been able to do that. I'd rather not.
22 But to the extent I can accommodate you, I will do it.

23 So that's sufficient for you?

24 MS. KRISHNAN: Yes, that is.

25 THE COURT: All right. Thank you.

1 MS. KRISHNAN: If I could just mention one more
2 thing, your Honor?

3 THE COURT: Yes.

4 MS. KRISHNAN: Which is that we would like to come
5 back to this Court in two weeks to address any issues
6 that have surfaced in the course of discovery. It may
7 be that the government, as you've previewed, raises
8 various privileges. Given the schedule we welcome the
9 Court's close supervision in this case and we would
10 welcome a --

11 THE COURT: Well the Clerk will suggest a date.
12 But let me turn to defense counsel.

13 All of this is agreeable to you?

14 MS. YEN: Well, your Honor, we don't know what the
15 government's -- no, I'm sorry, what the plaintiffs' case
16 will be yet, and we certainly have not seen their
17 discovery request. So realistically I guess what I
18 would ask the Court is if we can have a few days? I
19 think when they are able to share with us their
20 discovery request, quite shortly, if we could have a few
21 days to digest those requests, then I can go back to my
22 clients and see when we can respond to all those
23 requests before --

24 THE COURT: Well I'm not hearing -- I'm not
25 hearing anything, um, different than what they suggest.

1 Having heard from the plaintiffs, here's what I'm
2 thinking.

3 The Clerk will suggest a status conference two
4 weeks out.

5 MS. YEN: Yes.

6 THE COURT: The -- at that time I will be
7 interested to know who, um, because they know, they want
8 to take early on out of turn and about how long that's
9 going to take, just the logistics of it, and see when I
10 can schedule that in June or maybe towards the end of
11 May. I'll further talk about trial, and you'll be in a
12 better position to talk about trial, early in July.

13 So does that make sense?

14 MS. YEN: That does make sense, your Honor.

15 THE COURT: And in that time, um, I'm so gratified
16 that you're talking, because I expect them to be fully
17 forthcoming with what they want, and I'll be interested
18 to know what your response is, so that I can be guided
19 in how to deal with it.

20 And back to the plaintiffs. Have we taken care of
21 the issues?

22 MS. KRISHNAN: I'm sorry, your Honor, I missed
23 that question?

24 THE COURT: Are we done?

25 MS. KRISHNAN: Oh, yes, we are.

1 THE COURT: And the defense, are we done?

2 MS. YEN: Just one housekeeping matter, your
3 Honor.

4 THE COURT: Sure.

5 MS. YEN: At the end of the last hearing you
6 mentioned that the government -- that you were taking
7 the government as having denied the substantive
8 allegations of the complaint, which is absolutely
9 correct, and that we did not need any more formal
10 briefing. So we're taking up the Court's indication to
11 not file a formal answer in this case, if that's okay?

12 THE COURT: It's perfectly okay.

13 MS. YEN: Okay.

14 THE COURT: I knew exactly what I was saying.
15 This isn't the first time I've combined a preliminary
16 injunction with trial on the merits. It's meant to be a
17 fair but expeditious procedure. But fair.

18 No, I want it to be expeditious. You've denied
19 all the substantive allegations of the complaint, and
20 I'm very sensitive to that. I've now placed it on the
21 record twice.

22 MS. YEN: Yes, thank you, your Honor.

23 THE COURT: All right.

24 The Clerk will suggest a time for a status
25 conference. It will be in the afternoon. And it may

1 not be long.

2 THE CLERK: Tuesday, May 20th at 2:00 p.m.

3 THE COURT: Is that satisfactory to the
4 plaintiffs?

5 (Pause.)

6 MS. KRISHNAN: Would Thursday the 22nd work?

7 THE CLERK: Yes.

8 MS. KRISHNAN: Thank you.

9 THE COURT: There's five of you now, um, sitting
10 here, so, um, I try to accommodate.

11 How does defense counsel feel about that, Thursday
12 the 22nd at 2:00 p.m.?

13 MS. YEN: That's fine, your Honor. Thank you.

14 THE COURT: (To Clerk.) Did you say 2:00?

15 THE CLERK: Yes.

16 THE COURT: Thursday the 22nd at 2:00 p.m. for a
17 status conference.

18 Thank you very much. It's good to see you.

19 We'll stand in recess until that time.

20 (Ends, 11:45 a.m.)

21

22

23

24

25

C E R T I F I C A T E

I, RICHARD H. ROMANOW, OFFICIAL COURT REPORTER, do hereby certify that the forgoing transcript of the record is a true and accurate transcription of my stenographic notes, before Judge William G. Young, on Tuesday, May 6, 2025, to the best of my skill and ability.

/s/ Richard H. Romanow 05-08-25

RICHARD H. ROMANOW Date